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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,563	01/15/2004	Donald Peter Joseph Michelet	364-12US	4537

7590

08/19/2004

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EXAMINER

GRAHAM, MARK S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,563

Applicant(s)MICHELET ET AL. **Examiner**

Mark S. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,9-12 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 2,7,8,13 and 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/5/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claims 3, 12, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 12 both recite structure which is claimed in claim 2 but not in claim 1 leaving the recited structure with out antecedent basis. It appears that claims 3 and 12 are intended to be dependent on claim 2. For purposes of this action this is the assumption that has been made.

In claim 15, lines 3 and 4, it is recited that “preferably the form of the post simulates a bottle” thus not actually positively claiming a bottle shaped post. However, line 10 positively recites “the bottle” as if were a previously positively recited element leaving the intent of the bounds of the claim unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ernst. Ernst’s marble 19 is considered the “cap”.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst in view of Hopkins. Ernst only recites a single missile 20. However, it is known in such games to use a plurality of missiles as typified by Hopkins. It would have been obvious to one of ordinary skill in the art to have used such with Ernst's game as well to add interest to it.

Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst.

Regarding claim 9, Ernst does not disclose the exact weight of his missile. However, absent a showing of unexpected results the exact weight of Ernst's missile would have been up to the ordinarily skilled artisan depending on the action desired when element 19 was contacted.

Concerning claim 11, the examiner takes official notice that plastic is a commonly known material. Such would obviously have been a suitable material for Ernst's purpose depending on its availability to the ordinarily skilled artisan.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst in view of Kessler, Jr. et al. (Kessler).

Ernst discloses the claimed device with the exception of the second bowl. However, as disclosed by Kessler it is known in the art to provide a second bowl in a stacked fashion so that two such bowls can be used in playing a game. It would have been obvious to one of ordinary skill in the art to have done the same with Ernst's game to provide an additional playing device for another player. Regarding claim 17 such devices would have been capable of being "clipped" together as required by the claim.

Claims 2, 7, 8, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

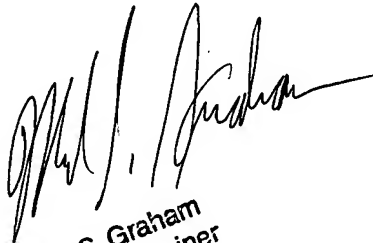
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Claims 3, 12, and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Higgins., Strongin, Whitlock, Engle, Crompton, Hicks, Robertson, Geror, and Kaplan have been cited for interest because they disclose similar devices.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 703-308-1355.

MSG
8/16/04



Mark S. Graham
Primary Examiner